

REMARKS

Careful consideration has been given to the Official Action of October 20, 2003 and reconsideration of the application as amended is respectfully requested.

The Examiner has rejected claims 1 and 12 under 35 U.S.C. 102 (b) as being allegedly anticipated by Adams (U.S. 3,114,425). Claim 2 has been rejected under 35 U.S.C. 103 (a) as being allegedly unpatentable over Adams in view of Plumley (U.S. 5,634,545). Claims 3-5 have been rejected under 35 U.S.C. 103 (a) as being allegedly unpatentable over Adams.

Claim 1 has been amended to incorporate patentable features of claim 2. Claim 2 has been canceled. Claims 6-10 were withdrawn from consideration for being directed to a non-elected invention. Thus, claims 1 and 3-5 are under consideration and no new matter has been introduced.

The Examiner's rejections are respectfully traversed for the following reasons.

In order to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the combination of the prior art references must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not be based on the Applicants' disclosure.

A feature of the present application is to provide an apparatus which facilitates the performance of two mining operations simultaneously. The first operation is the mining of material (such as coal) to form a mined road. Typically, this mined material would be produced by a continuous miner. The second mining operation is to mine laterally from the apparatus. This is achieved by the augers of the apparatus as recited in claim 1.

Claim 1 as now presented is distinguishable from the cited art as it recites a "hopper" to receive the mined material produced in forming the road, a conveyor extending rearwardly from the hopper, and augers that form tunnels generally normal to the conveyor and delivers materials to the conveyor.

The Examiner has rejected claim 2 under 35 U.S.C. 103 (a) as being allegedly unpatentable over Adams in view of Plumley. However, there is no motivation or suggestion to modify and combine Adams and Plumley. In particular, it should be noted that Adams does not suggest or consider the conveyor 3 to be adapted to receive material being mined to form the tunnel 1. Accordingly, Adams does not consider or suggest providing a hopper at the leading portion of conveyor 3. Plumley provides a mining assembly with the mined material being provided at the remote forward end of the conveyor, not intermediate ends of the conveyor as suggested by the present application. Although Plumley discloses a conveyor train that extends from a machine working at a mine face to a remote floor conveyor (column 4, lines 48-52), and provides a hopper assembly 16 for catching coal mined by the machine at the coal face, there is no suggestion that such hopper would be useful in connection with augers, such as those described in Adams which deliver mined material to a conveyor from a direction normal to the conveyor.

In fact, in absence of hindsight provided by the present specification, one of skill in the art would not use the augers described in Adams with a hopper such as described in Plumley. The reason for this may be seen, by way of example, from Fig. 1 of Adams which shows the auger (57) disposed transverse to the conveyor (3). It may be appreciated from this figure that provision of a hopper on the conveyor would impact the auger and necessitate a redesign of the apparatus. It is only through hindsight, with the aid of Applicants' disclosure,

that one would appreciate that a hopper could be disposed forward of the conveyor so as to be able to receive mine at its forward end via the continuous miner and intermediate its ends via the augers as recited in claim 1.

For the above reasons it is respectfully submitted that the application is in allowable condition and favorable reconsideration is earnestly solicited.

Respectfully submitted,

Clifford J. Mass
c/o Ladas & Parry
26 West 61st Street
New York, NY 10023
Reg. No. 30,086
Tel. No. (212)708-1890